

Section I (Remarks)

Further to the previous response, all prior rejections were withdrawn, except for the rejections under 35 U.S.C. 103 (a). These rejections are addressed below.

A. Rejections under 35 U.S.C. 103 (a)

Claims 1-5, 49 and 52-57 were rejected under 35 U.S.C. 103 (a) as obvious over U.S. 2004/0106590 to Eisenstein ("Eisenstein") in view of Remington's Pharmaceutical Sciences.

As indicated in the Office Action, the present invention is afforded an effective date of September 23, 2003. Eisenstein was filed on August 29, 2003, and published on June 3, 2004. Eisenstein claims priority to U.S. Provisional Application Nos. 60/444,570, filed on Feb. 3, 2003, and 60/406,873, filed on Aug. 29, 2002.

Eisenstein was published after the filing date of the instant application, and thus is not available as prior art under 35 U.S.C. 102 (a) or (b). At the time of invention, Eisenstein was also subject to an obligation of assignment to the same entity as the instant application, so is not available as prior art under 103 (c).

As evidence of the common assignment, copies of the relevant assignment documents (i.e., assignments of the instant application, and the cited reference) are provided along with this Response.

Since the primary reference in the obviousness rejection is not available as prior art, Applicants respectfully request that the rejection under 35 U.S.C. 103 be withdrawn with respect to Claims 1-5, 49 and 52-57.

CONCLUSION

As amended, all pending composition claims are patentably distinguished over the art, and are in form and condition for allowance. The examiner is requested to favorably consider the foregoing, and to responsively issue a Notice of Allowance.

The Examiner is also encouraged to favorably consider rejoining one or more method claims, provided such are amended to include the limitations of one or more allowed composition claims. To facilitate rejoinder, Claims 44 and 46-48 were

previously amended to depend from composition Claim 28. As the claimed methods require the use of novel and non-obvious compositions, the claimed methods are also novel and non-obvious.

If the Examiner is not inclined to permit rejoinder of one or more of the method claims, the Examiner is encouraged to contact the undersigned Applicants' representative at (919) 419-9350 to authorize an Examiner's amendment to cancel the method claims in order to facilitate issuance of a Notice of Allowance.

Respectfully submitted,

/david bradin/

David Bradin

Reg. No. 37,783

Attorney for Applicants

INTELLECTUAL PROPERTY/
TECHNOLOGY LAW
Phone: (919) 419-9350
Fax: (919) 419-9354
Attorney File No.: 4354-110

<p>The USPTO is hereby authorized to charge any deficiency or credit any overpayment of fees properly payable for this document to Deposit Account No. 08-3284</p>
